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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,574	11/16/2000	John M. Packes JR.	00-068	5486

22927 7590 03/15/2004

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/714,574

Applicant(s)

PACKES ET AL.

Examiner

Stephen M Gravini

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable

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subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete, and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998). Together, the "technological arts" and "useful, concrete, and tangible result" judicial review standard, result in a comprehensive examination standard wherein the "technological arts" is one element and the "useful, concrete, and tangible result" is another complementary element.

This comprehensive examination standard was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an

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improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in

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State Street (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. The Board of Patent Appeals and Interferences (BPAI) have recently acknowledged this dichotomy in affirming a §101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BPAI 2001).

Claims 1-22 and 28 are rejected under 35 U.S.C. 101 because the independently claimed invention does not recite a useful, concrete, and tangible result under *In re Alappat*, 31 USPQ2d 1545 (Fed. Cir. 1994) and *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596 (Fed Cir. 1998) such that the claimed invention is within the technological arts under *In re Waldbaum* 173 USPQ 430 (CCPA 1972) wherein the phrase "technological arts" is synonymous with "useful arts" as it appears in Article I, Section 8 of the United States Constitution. In this claim, it is considered that a concrete and tangible result within the technological arts is not recited. Specifically, the recitation of receiving, detecting, identifying, determining, and/or offering is considered not to produce a concrete result because a result cannot be assured or is not reproducible within the technological arts. Furthermore, under *In re Wamerdam*, 33 F.3d 1354; 31 USPQ2d 1754 (Fed. Cir. 1994), the receiving, detecting, identifying, determining, and/or offering are considered intangible because those steps are simply an abstract construct, such as a disembodied data structure and a method of making it, wherein those recitations involve more than a manipulation of an abstract idea and therefore is non-statutory under 35 USC 101. Because the independently claimed invention does not recite a useful, concrete, and tangible result, such that it is considered not within technological arts so that it uses technology in a non-trivial matter.

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Finally under *Ex parte* Bowman, 61 USPQ2d 1665 (Bd. Pat. App. & Inter. 2001) (unpublished but cited for analysis rather than precedent), in which an invention disclosed and claimed directed to a human merely making mental computations and manually plotting results on a paper chart is nothing more than an abstract idea which is not tied to any technological art and is not a useful art as contemplated by the United States Constitution. In this independently claimed invention, the steps of receiving, detecting, identifying, determining, and/or offering are considered nothing more than an abstract idea since it is not tied to any technological art. However in order to consider those claims in light of the prior art, examiner will assume that those claims recite statutorily permitted subject matter.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sedam et al. (US 4,412,292).

Claims 13-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Groover et al. (US 4,717,043).

Claims 17-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cragun et al. (US 5,504,675).

Claims 23-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Helbing et al. (US 5,546,303).

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Claim 27 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Molbak (US 5,620,079).

Claim 28 is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Terranova (US 6,098,879).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over an obvious variation of examiner's personal experience of a method and system of vending machine operation as part of the examiner's routine purchase or refilling of a drink at a Cocoa-Cola labeled soft drink dispensing machine outside a retail establishment with electrical power to mechanically operate the soft drink dispensing machine. The claimed selection signal, automatic transmission, and data communication controller are considered automation of a old and well known practice which will be discussed infra. The claimed vending machine, customer, and retail establishment are considered non-functional descriptive material which will also be discussed infra. Since at least 1990, examiner has performed the claimed invention as a soft drink dispensing machine purchaser which encompasses the claimed method and system of vending machine operation comprising:

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receiving a request for a transaction from a customer at the vending machine

optionally including customer proximity;

identifying or determining a condition at a retail establishment or determining whether a requested transaction can be performed by the vending machine optionally including a trigger signal; and

based on the identified condition or trigger signal if the transaction can be performed, outputting to the customer in response or offer to the received request; or

a vending machine including offer means for selectively outputting an offer;

detection means or trigger generating signal means located at a retail establishment for detecting a condition at the retail establishment optionally including retail establishment trigger signal transmission means; and

communication means for allowing data communication between said detection means and said offer means optionally including offer means outputting an offer in response to the trigger signal are part of examiner's experience. Examiner also has personal experience with the claimed steps of coupon redemption including code, sales frequency, service queue, inventory and stock, identified condition, human or automatic signal transmission, and remote controller or vending machine location. As a soft drink purchaser, examiner has frequently observed the claimed method and system for promoting sales. The claimed receiving a request for a transaction from a customer at the vending machine optionally including customer proximity and based on the identified condition or trigger signal if the transaction can be performed, outputting to the customer in response or offer to the received request are considered equivalent to

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coinage insertion into a soft drink dispensing machine associated with a promoter of Cocoa-Cola. The claimed vending machine including offer means for selectively outputting an offer is considered again equivalent to the soft drink dispenser responding to the examiner proper insertion of coinage in the proximity of the machine by displaying a signal or dispensing a soft drink. The claimed detection means or trigger generating signal means located at a retail establishment for detecting a condition at the retail establishment optionally including retail establishment trigger signal transmission means is considered equivalent to the soft drink dispensing machine operating as intended if a retail establishment has electrical power supplied to the machine for cooling and coinage-soft drink transactional exchange. The claimed communication means for allowing data communication between said detection means and said offer means optionally including offer means outputting an offer in response to the trigger signal is considered equivalent to either the soft drink purchaser or an examiner machine refiller communicating transactionally with the soft drink machine. The claimed steps of coupon redemption including code, sales frequency, service queue, inventory and stock, identified condition, human or automatic signal transmission, and remote controller or vending machine location are considered equivalent to old and well known steps use by the examiner in dealing with soft drink machine purchases and machine refilling. The claimed invention, recited by the applicant, has been provided examiner personal experience long before the filing of applicant's invention. Examiner notes that it is old and well known to those skilled in the art of promoting sales, that it would have been obvious to claim the invention as recited by the applicant, in order to overcome the

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explicit teachings of examiner's personal experience discussed supra. The claimed invention contains automated features, such as selection signal, automatic transmission, and data communication controller, which are obvious variations to the examiner's experience that is so old and well known that the examiner will use Official notice to obviate that claimed subject matter. It would have been obvious to one skilled in the art to provide the automated claimed steps since those features are merely automated features of a concept that is old and well known. Please see *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) in which the court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.

Furthermore the claimed invention has been part of examiner's experience except for the claimed vending machine, customer, and retail establishment. The claimed vending machine, customer, and retail establishment are merely representative information that is considered non-functional descriptive language. It would have been obvious to those skilled in the art of promoting sales to use those terms to seek patent protection. The non-functional descriptive language including the terms vending machine, customer, and retail establishment are considered merely a position for offering an item, product, or service. These non-functional descriptive language differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The claimed reward and condition steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 32 F. 3d 1579, 32 USPQ2d 1031

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(Fed. Cir. 1994). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to claim vending machine, customer, and retail establishment having any type of content, because such data does not functionally relate to the steps in the method and system claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention. Additionally the claimed invention has been part of examiner's experience except for the claimed selection signal, automatic transmission, and data communication controller. Selection signal, automatic transmission, and data communication controller are an obvious automated variation to the traditional rewards experienced by most soft drink purchasers or refillers skilled in the art. Automation does not impart patentability as discussed in applying *Venner* to the examination of the present application. The motivation to combine applicants claimed invention with the examiner's personal experience is to allow merchants greater consumer targeting capabilities, which clearly shows the obviousness of the claimed invention.

Double Patenting

Claims 1-28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of any of the copending Application No. 09/218085, 09/540709, 09/994810, 09/688372, or 09/713001. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application contains the an obvious variation recitation in claim language as applied to the copending application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 5,988,346 because the patented redemption request and inventory retrieval are obvious variations to the present application claims including selectively outputting an offer including triggers with response, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6,317,649 because the patented receiving a purchase request and customer question or promotion presentation steps are obvious variations to the present application claims including customer transaction request and performance determination steps, or are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of U.S. Patent No. 6,324,520 because the patented purchaser selection receiving and product offering are an obvious variation to the present application claims including customer transaction request and customer offer outputting. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application contains obvious variant recitations which are obvious variations of the patented invention features since both comparisons perform the same function, in the same way with the same result.

Response to Arguments

Applicant's arguments filed January 4, 2003 have been fully considered but they are not persuasive.

non-statutory subject matter

As applicants requested, the non-statutory subject matter has been further clarified to address concerns raised over the appropriateness of the rejection.

anticipation

Office policy permits prior art rejections be ordinarily confined strictly to the best art available (MPEP §706.02). In order to overcome an anticipatory rejection, any one of persuasively arguing that the claims are patentably distinguishable from the prior art, amending the claims to patentably distinguish the invention over the prior art, and perfecting priority or filing an affidavit can be asserted (MPEP §706.02(b)). The independently claimed inventions are considered so broad that the face of each reference used in the anticipatory rejection is considered a prima facie teaching of the claimed inventions. In this case, anyone of the prior art reference cited in Office actions is considered to clearly anticipate the claimed inventions. Applicants have not overcome the anticipatory rejections outlined in current Office policy, since none of the suggested assertions were applied in response to the anticipatory rejection. However in order to assist the applicants, most of the rejections have been withdrawn such that the claimed inventions are more clearly rejected.

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obviousness

Non-functional descriptive material as discussed in obviousness rejections, is considered to apply a reasonable interpreted meaning to those skilled in the art for a particular recitation used in an applicants' claimed invention. For example, the claimed vending machine, retail establishment, or customer can be reasonably interpreted to be patentably equivalent to a soda machine, a vendor, or a buyer. Applicants argue that the claim language is ignored. The examiner applies patentably equivalent meanings to the recited claim features to show how those features are treated as non-functional descriptive material. This examiner application is consistent with current Office policy and practice in claim interpretation.

Applicants disagreement with examiner's interpretation of asserting patentability based on automation of a previously manual means or method of performing the claimed invention is noted.

The requested affidavit is attached to this Office action.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is considered that motivation to combine applicants claimed invention with the examiner's personal

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experience is to allow merchants greater consumer targeting capabilities, which clearly shows the obviousness of the claimed invention.

The requested evidence is included in the attached affidavit.

double patenting

It is considered that the claimed invention defined in this application is an obvious variation of the invention defined in claims of the commonly assigned patented.

Examiner's consideration is the basis for maintaining the double patenting rejection.

Claim limitation and motivation arguments raised by the applicants are considered appropriate for obviousness rejection and are discussed above.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Steve Gravini whose voice telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". Examiner can normally be contacted Monday through Friday from 6:00 a.m. to 3:30 p.m. **If applicants choose to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured.** Please see MPEP 502.02. Information may be sent to the Office by facsimile transmission. The facsimile transmission telephone numbers for TC-3600 are:

After-final	(703) 872-9327
Official	(703) 872-9306
Non-Official/Draft	(703) 872-9325


STEPHEN GRAVINI
PRIMARY EXAMINER

smg
March 12, 2004

EXAMINER AFFIDAVIT SUPPORTING OBVIOUSNESS REJECTION

Claims 1-28 are an obvious variation over examiner's personal knowledge of a method and system of vending machine operation as part of the examiner's routine purchase or refilling of a drink at a Cocoa-Cola labeled soft drink dispensing machine outside a retail establishment with electrical power to mechanically operate the soft drink dispensing machine. The claimed selection signal, automatic transmission, and data communication controller are considered automation of a old and well known practice which will be discussed infra. The claimed vending machine, customer, and retail establishment are considered non-functional descriptive material which will also be discussed infra. Since at least 1990, examiner has performed the claimed invention as a soft drink dispensing machine purchaser which encompasses the claimed method and system of vending machine operation comprising:

- receiving a request for a transaction from a customer at the vending machine optionally including customer proximity;

- identifying or determining a condition at a retail establishment or determining whether a requested transaction can be performed by the vending machine optionally including a trigger signal; and

- based on the identified condition or trigger signal if the transaction can be performed, outputting to the customer in response or offer to the received request; or

- a vending machine including offer means for selectively outputting an offer;

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detection means or trigger generating signal means located at a retail establishment for detecting a condition at the retail establishment optionally including retail establishment trigger signal transmission means; and

communication means for allowing data communication between said detection means and said offer means optionally including offer means outputting an offer in response to the trigger signal are part of examiner's experience. Examiner also has personal experience with the claimed steps of coupon redemption including code, sales frequency, service queue, inventory and stock, identified condition, human or automatic signal transmission, and remote controller or vending machine location. As a soft drink purchaser, examiner has frequently observed the claimed method and system for promoting sales. The claimed receiving a request for a transaction from a customer at the vending machine optionally including customer proximity and based on the identified condition or trigger signal if the transaction can be performed, outputting to the customer in response or offer to the received request are considered equivalent to coinage insertion into a soft drink dispensing machine associated with a promoter of Cocoa-Cola. The claimed vending machine including offer means for selectively outputting an offer is considered again equivalent to the soft drink dispenser responding to the examiner proper insertion of coinage in the proximity of the machine by displaying a signal or dispensing a soft drink. The claimed detection means or trigger generating signal means located at a retail establishment for detecting a condition at the retail establishment optionally including retail establishment trigger signal transmission means is considered equivalent to the soft drink dispensing machine operating as intended if a

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retail establishment has electrical power supplied to the machine for cooling and coinage-soft drink transactional exchange. The claimed communication means for allowing data communication between said detection means and said offer means optionally including offer means outputting an offer in response to the trigger signal is considered equivalent to either the soft drink purchaser or an examiner machine refiller communicating transactionally with the soft drink machine. The claimed steps of coupon redemption including code, sales frequency, service queue, inventory and stock, identified condition, human or automatic signal transmission, and remote controller or vending machine location are considered equivalent to old and well known steps use by the examiner in dealing with soft drink machine purchases and machine refilling. The claimed invention, recited by the applicant, has been provided examiner personal experience long before the filing of applicant's invention. Examiner notes that it is old and well known to those skilled in the art of promoting sales, that it would have been obvious to claim the invention as recited by the applicant, in order to overcome the explicit teachings of examiner's personal experience discussed supra. The claimed invention contains automated features, such as selection signal, automatic transmission, and data communication controller, which are obvious variations to the examiner's experience that is so old and well known that the examiner will use Official notice to obviate that claimed subject matter. It would have been obvious to one skilled in the art to provide the automated claimed steps since those features are merely automated features of a concept that is old and well known. Furthermore the claimed invention has been part of examiner's experience except for the claimed vending

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machine, customer, and retail establishment. The claimed vending machine, customer, and retail establishment are merely representative information that is considered non-functional descriptive language. It would have been obvious to those skilled in the art of promoting sales to use those terms to seek patent protection. The non-functional descriptive language including the terms vending machine, customer, and retail establishment are considered merely a position for offering an item, product, or service. These non-functional descriptive language differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The claimed reward and condition steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to claim vending machine, customer, and retail establishment having any type of content, because such data does not functionally relate to the steps in the method and system claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention. Additionally the claimed invention has been part of examiner's experience except for the claimed selection signal, automatic transmission, and data communication controller. Selection signal, automatic transmission, and data communication controller are an obvious automated variation to the traditional rewards experienced by most soft drink purchasers or refillers skilled in the art. Automation does not impart patentability as discussed in applying *Venner* to the examination of the present application. The motivation to combine applicants claimed invention with the

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personal experience is to allow merchants greater consumer targeting capabilities, which clearly shows the obviousness of the claimed invention.

I hereby declare that all statements made under this declaration of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under 18 USC 1001 and that such will false statements may jeopardize the validity of the application or any patent issued thereon.

She Lin